

J. M. DUNBAR
A. G. ANDRIKOPOULOS

IBLA 81-921

Decided March 4, 1982

Joint appeal from decisions of the Colorado State Office, Bureau of Land Management, denying approval of assignments of operating rights in oil and gas lease C 24070.

Affirmed.

1. Oil and Gas Leases: Relinquishments

Where a lessee relinquishes an oil and gas lease, he is exercising a right given to him by the Mineral Leasing Act, and BLM may not interfere. The relinquishment is effective as of the day it is filed, notwithstanding that prospective assignees of an interest in the lease may object.

2. Oil and Gas Leases: Bona Fide Purchaser -- Oil and Gas Leases: Relinquishments

Where an oil and gas lessee has assigned an interest to a party which is assertedly a bona fide purchaser, and where the lessee subsequently relinquishes his lease interest as part of a guilty plea agreement in a Federal criminal proceeding in which he is charged with illegally manipulating the noncompetitive lease sale system, the assignee's interest is not preserved by the bona fide purchaser provisions, which do not protect any purchasers of lease interests from destruction by the relinquishment or compelled disposition of the underlying lease by the lessee.

APPEARANCES: Morris R. Massey, Esq., Casper, Wyoming, for appellants;
Harold J. Baer, Jr., Esq., for the Bureau of Land Management.

OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

Oil and Gas lease C-24070 was issued on August 6, 1976, to Minnie A. Brown by the Colorado State Office, Bureau of Land Management (BLM), and originally covered 926.49 acres. Minnie Brown assigned 100 percent of record title to the lease to Maurice W. Brown, and BLM approved the assignment effective February 1, 1977.

Effective May 18, 1976, 366.49 acres of the leased lands were committed to the Elk Springs Unit by agreement No. 14-08-001-17071. On September 6, 1979, BLM segregated the remaining nonunitized acreage into lease C-28804, thus leaving the 366.49 unitized acres in the instant lease, C-24070.

On January 31, 1980, BLM approved an assignment of 50 percent of record title to this lease from Maurice Brown to the Lancaster Corporation (Lancaster). On June 10, 1980, Lancaster filed a forfeiture and relinquishment of all of its interests in lease C-24070, pursuant to a criminal plea agreement with the United States Attorney in Denver, Colorado. 1/

On June 19, 1980, J. M. Dunbar, unit operator for the Elk Springs Unit, to which this lease was committed, wrote to BLM, indicating that he had already drilled a gas discovery well on lands nearby the leased lands and suggesting that he was anxious to begin developmental drilling on the leased lands, as prescribed by the unit agreement, and that uncertainty about the status of Lancaster's interest was hampering operation of the unit. Dunbar stated that he had negotiated with Brown (who still held the remaining undivided 50 percent of the record title) for an assignment of operating rights to his interest and requested that he be extended a preferential right to acquire Lancaster's relinquished 50 percent interest in the acreage. BLM did not respond to this request but, instead, apparently asked Geological Survey (GS) not to permit any developmental drilling on the lands, thus endeavoring to forestall activity on the lease until the evident confusion occasioned by Lancaster's relinquishment could be removed.

On September 8, 1980, Dunbar filed with BLM an assignment to him from Brown of operating rights in Brown's 50 percent undivided interest, and an assignment in turn of a 50 percent interest in these operating rights from Dunbar to A. G. Andrikopoulos. BLM took no immediate action to approve this assignment. On February 17, 1981, Dunbar filed a second, updated request for preferential treatment, noting that he had drilled a second developmental well. Dunbar suggested that the uncertainty about the ownership of the lease was creating a hardship and increasing the cost of developing the unit.

1/ The record is silent as to the details of this agreement.

On June 25, 1981, Brown filed a relinquishment of the remaining 50 percent undivided interest in this lease pursuant to a criminal plea agreement, as had Lancaster earlier. ^{2/} On July 7, 1981, BLM issued two decisions disapproving the assignments of operating rights from Brown to Dunbar, and the assignment from Dunbar to Andrikopoulos. Dunbar and Andrikopoulos appealed.

[1] BLM correctly disapproved these assignments. Operating rights on an oil and gas leasehold are subservient to the lease itself. That is, the operating rights depend on the lease for their existence, and when the lease ends, so do the operating rights associated with it.

The Department's responsibility to accept a lessee's written relinquishment of all oil and gas lease rights is expressly set out in the Mineral Leasing Act of 1920, as amended, 30 U.S.C. §§ 187 (Supp. II 1978) and 187b (1976). The filing of a written relinquishment by the record title holder is sufficient to surrender the lease. 43 CFR 3108.1. A relinquishment effectively terminates the lease as of the day on which it is filed. Id.; Humble Oil and Refining Co., 64 I.D. 5 (1957).

Moreover, the lessee's power to relinquish a lease independent of any action by the Department is a right given to the lessee by the Mineral Leasing Act, and the Secretary is precluded from interfering with the exercise of this power. Lazare F. Bernard, A-27770 (Dec. 22, 1958); Thomas F. McKenna, 62 I.D. 376, 379 (1955). Where the lessee has entered into an agreement assigning an interest in his lease, he retains the right to relinquish the lease until after BLM has approved the assignment and given it effect, notwithstanding the fact that the assignee openly objects to the relinquishment. Sol Singer, 35 IBLA 361 (1978); James S. Holmberg, 67 I.D. 302 (1960). BLM had not

^{2/} Upon our inquiry, the Central Region Office of Investigations, part of the Secretary's Office of the Inspector General, provided us with information showing that on Apr. 21, 1981, Maurice Brown pled guilty to one count of violating 18 U.S.C. § 1860 (1976), which provides as follows:

"Whoever bargains, contracts, or agrees, or attempts to bargain, contract, or agree with another that such other shall not bid upon or purchase any parcel of lands of the United States offered at public sale, or

"Whoever, by intimidation, combination, or unfair management, hinders, prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale --

"Shall be fined not more than \$1,000 or imprisoned not more than one year, or both."

As part of the plea agreement, Brown relinquished all Federal leases which he had obtained through multiple filing, including the instant lease, and agreed to make a nondeductible charitable contribution of \$200,000, representing his net profit from illegal multiple filing.

approved the assignment of operating rights associated with Brown's interest in the lease as of the filing of Brown's relinquishment on June 25, 1981. Therefore, Brown retained the right to relinquish his interest and did so, regardless of any objections appellants may have had.

When Brown relinquished his lease, appellants' operating rights therein died with it. Accordingly, BLM properly disapproved the assignments in question, since there was no longer any such interest to be held by any assignee(s). The resolution of any adverse effects of this relinquishment upon appellants is properly a private matter between them and Brown.

[2] Appellants argue that the Mineral Leasing Act, 30 U.S.C. § 184(h)(2) (1976), protects their interests from cancellation because they acquired them in good faith. This section, as applied by the corresponding regulations, 43 CFR 3102.1-2 and 3108.3(c), provides that a lease shall not be canceled and an interest in a lease shall not be declared forfeited to the extent that doing so would adversely affect the title or interest of a bona fide purchaser. Even assuming, arguendo, that appellants did purchase their operating interest in good faith without knowledge that Brown's interest was subject to cancellation, we conclude that the bona fide purchaser provision is not broad enough to protect them.

The bona fide purchaser regulations provide only that the Department's right to cancel a lease or forfeit an interest in a lease does not apply so as to adversely affect the interest of a bona fide purchaser. They do not place a similar restriction on the Department's acceptance of a relinquishment or compulsory disposition of a lease interest. The only reference to "compulsory disposition" in the regulations is the proviso in 43 CFR 3102.1-2(b) that the bona fide purchaser's interest must not be "subject to cancellation, forfeiture, or compulsory disposition," if it is to be protected.

This regulatory differentiation between cancellation or forfeiture of leases and interests therein, where a bona fide purchaser is protected, and compulsory disposition, where he is not protected, is evident in the Mineral Leasing Act. In 30 U.S.C. § 184(h)(1) (1976), Congress provided three alternatives in the event of violations: (1) the lease could be canceled; (2) an interest in a lease could be declared forfeited; or (3) a person owning or controlling an interest could be compelled to dispose of the interest. Significantly, in 30 U.S.C. § 184(h)(2) (1976), Congress extended the bona fide purchaser protection only to the first two options, i.e., cancellation and forfeiture, and did not mention compulsory disposition. Therefore, the Department is without authority to afford bona fide purchaser protection to appellants in the present circumstances, where their successor in interest has relinquished his interest, albeit under compulsion.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Bernard V. Parrette
Chief Administrative Judge

We concur:

C. Randall Grant, Jr.
Administrative Judge

Douglas E. Henriques
Administrative Judge

